



Federal Communications Commission  
Washington, D.C. 20554

April 17, 2017

DA 17-367

Mr. Chris Henderson  
Chief Executive Officer  
Universal Service Administrative Company  
700 12th Street NW, Suite 900  
Washington, DC 20005

RE: Schools and Libraries Universal Service Support Mechanism - Reserve Funding

Dear Mr. Henderson:

As part of the Commission's ongoing management and oversight of the Universal Service Fund (USF), this letter provides revised directions to the Universal Service Administrative Company (USAC) regarding how USAC should administer schools and libraries universal support mechanism ("E-rate program") funds, and in particular, how USAC should account for the different categories of potential funding disbursements.<sup>1</sup> The revised guidance we issue today becomes effective immediately, should be reflected in USAC's quarterly filings beginning with 3Q 2017, and supersedes the letter sent to USAC on December 14, 2014 (DA 14-1820) ("2014 Letter").<sup>2</sup>

*Reserving E-rate Funds.* The Commission has directed USAC to prepare financial statements for the USF consistent with generally accepted accounting principles for federal agencies (Federal GAAP) and to keep the USF in accordance with the United States Standard General Ledger (USSGL).<sup>3</sup> The Office of the Managing Director (OMD) is tasked with the general responsibility over the Commission's financial matters, including the preparation of the Commission's financial statements which include the USF.<sup>4</sup> It is by this authority that we are issuing replacement guidance to help USAC improve its management of E-rate program funds and thus ensuring consistency and transparency in how USAC reserves funds for pending applications,<sup>5</sup> committed but undisbursed funds, and pending appeals. The 2014 Letter instructed USAC to generally not reserve funding for pending applications that are older than the last three funding years and pending appeals. Despite the 2014 guidance, USAC's recent quarterly filings reveal that USAC has been reserving some funds for older appeals on an ad hoc basis.<sup>6</sup> Also, the

<sup>1</sup> Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, I, IIIA (May 2, 2016).

<sup>2</sup> Letter from Jon Wilkins, Managing Director, Federal Communications Commission to Chris Henderson, Chief Executive Officer, USAC, DA 14-1820 (Dec. 15, 2014).

<sup>3</sup> *Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund*, CC Docket No. 96-45, Order, 18 FCC Rcd 19911, 19912-13 (2003).

<sup>4</sup> *Amendment of Part 54 of the Commission's Rules*, Order, 21 FCC Rcd 7422, 7423 (2006). See also 47 CFR § 0.11(a)(8).

<sup>5</sup> Pending applications are funding requests for which USAC has not yet issued a funding commitment decision letter (FCDL) that would grant or deny funding.

<sup>6</sup> See, e.g., USAC, Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2017 (Feb. 1, 2017), at 66-67, <http://www.usac.org/about/tools/fcc/filings/2017/q2/USAC%20Q2017%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing.pdf>; USAC, Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2017 (Nov. 2, 2016), at 64-65,

Commission's *Second E-rate Modernization Order*, which was released shortly after the 2014 Letter was sent to USAC, directed USAC to review and update its processes for evaluating and recommending reserve amounts to fund pending applications, undisbursed funding commitments, and pending appeals.<sup>7</sup> Therefore, today's letter seeks to clarify the different instructions that came in the 2014 Letter and the *Second E-rate Modernization Order*, provide a clearer and more consistent E-rate fund reserve practice for USAC to follow, and emphasize that the Commission expects USAC to implement the guidance contained in this letter.

As mentioned above, there are three categories for which USAC should maintain reserves: (1) pending applications; (2) funding that has been committed but not yet disbursed; and (3) appeals pending with USAC and the Commission. We direct USAC to reserve 100 percent of the funds it would need for all of these categories of potential disbursements.<sup>8</sup>

For the first category, pending applications, the amount reserved should equal the amounts requested in applications for which USAC has not yet issued a funding commitment decision letter (FCDL), which is the decision letter informing applicants whether the funds requested have been granted or denied. USAC should reserve 100 percent for these funding requests until a decision is made to grant or deny the funding. As explained below, any funding request amounts that are denied should no longer be reserved and should be included in the carry forward amount. Any amounts that are granted would shift to the second category – committed-but-undisbursed funds.

For the second category – committed-but-undisbursed funds – the amount reserved should include any funding that has been granted through a FCDL. The amount reserved should be adjusted downward once these amounts are invoiced and paid or once an applicant misses the invoice deadline or fails to request an extension of the invoice deadline. If an applicant has not yet invoiced but has submitted a timely invoice extension request, the amount of the commitment should remain reserved in the category of committed-but-undisbursed funds until the invoice is paid or the extension expires.<sup>9</sup> USAC is able to determine the dollars associated with invoice extensions, now that the invoicing deadline is firmly established in the Commission's rules, and can take those amounts into account when analyzing the amount of funding to be reserved for committed funds.<sup>10</sup> Also, if an applicant has filed an invoice on a timely basis, but the invoice is being held by USAC for further review, there should continue to be a reserve for these dollars in the committed-but-undisbursed funds category until the matter is resolved.

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<http://www.usac.org/about/tools/fcc/filings/2017/q1/USAC%201Q2017%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing.pdf>.

<sup>7</sup> *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket No. 13-184, WC 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15590, para. 130 (2014) (*Second E-rate Modernization Order*). Although USAC was instructed to work with the Office of Managing Director and other Commission staff on this recommendation, USAC did not provide additional updates.

<sup>8</sup> These are described as "potential" disbursements because pending applications or pending appeals may not be granted, and commitments that have not yet been disbursed may not be disbursed if an applicant does not follow certain requirements – e.g., invoicing before the invoice deadline.

<sup>9</sup> If the invoice extension expires without an invoice being submitted, the reserve should be adjusted downward to reflect the expired amount.

<sup>10</sup> 47 CFR § 54.514. If an invoice is denied and the invoice denial is appealed, and USAC is reserving the dollars for the affected funding request in the committed-but-undisbursed funds reserve category, USAC should not add those dollars to the appeals reserve until they are removed from the committed-but-undisbursed funds reserve category. See *infra* note 11.

The third category, pending appeals, should include reserves for all appeals (or waivers) that have been filed with either USAC or the Commission. This would include, for example, the amount at issue in an appeal that is filed with USAC after USAC denies a funding request or invoice. USAC should not, however, reserve funds for appeals in this category until an actual appeal (or waiver) has been filed.<sup>11</sup> Additionally, USAC should not reserve funds for appeals resulting from any USAC decision to seek reimbursement of funds already disbursed. When there is no potential for a future disbursement on a pending appeal, there should be no reserve for that appeal.

The direction to reserve 100 percent for the above-referenced categories alters the 2014 Letter guidance that generally instructed USAC to not reserve funds for pending applications that are older than three years and pending appeals. We know that not all funding applications are granted, not all committed funds are disbursed and not all pending appeals are granted. However, we have determined that a 100 percent reserve rate is the most consistent and transparent way for USAC to track needed funds and provides certainty that there is available funding for disbursements. The 2014 Letter had also provided some flexibility to make a percentage of the funds it reserves for pending disbursements (committed applications that have not yet been invoiced) available for carry forward. Upon further review, we have determined that using a consistent 100 percent reserve rate enhances OMD's ability to oversee USAC's management of the E-rate fund and the Commission's ability to track the amount of funding available for carry forward.<sup>12</sup>

*Reinforcing Carry Forward Procedures.* We also remind USAC of the relationship between reserving funds for potential disbursements for each funding year and the carry forward procedures, and the importance of accurately representing unused funds on a quarterly basis.<sup>13</sup> In 2003, in the *Schools and Libraries Third Report and Order*, the Commission amended its rules to require the Administrator (currently USAC) to file quarterly estimates of unused funds from prior fund years when it submits its projection of program demand for the upcoming quarter, and described "unused funds" as "the difference between the amount of funds collected, or made available for that particular funding year, and the amount of funds disbursed or to be disbursed."<sup>14</sup> The Commission remarked that not only does this prepare USAC for the annual release of carry forward funds, but "provides schools and libraries with general notice regarding the amount of unused funds that may be made available in the subsequent year."<sup>15</sup>

Adhering to the longstanding carry forward rules, in each quarter, USAC should include any de-obligated and unused funds for each funding year in its proposed carry forward amount. For example,

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<sup>11</sup> We expect that USAC will have safeguards in place so that it will not have duplicate reserves for E-rate program dollars. For example, dollars associated with a funding request denial that is being appealed should not be moved to the reserve for pending appeals until those dollars are removed from their original reserve category.

<sup>12</sup> See, e.g., *Amendment of Part 54 of the Commission's Rules*, Order, 21 FCC Rcd 7422, 7423 (2006) (revising section 54.709 to require USAC to submit to the OMD projections of demand for USF support mechanisms, projections of revenue, projections of administrative expenses, and the contribution base, and requiring OMD to calculate the contribution factor, consistent with the OMD's general responsibility over the Commission's financial matters); 47 CFR § 54.507(a)(5)-(6) (requiring USAC to report the amount of collected and unused funds to the Commission quarterly and that in the second quarter of each calendar year, all funds that are collected and that are unused from prior years be made available for use in the next full funding year of the E-rate program).

<sup>13</sup> *Id.*

<sup>14</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26933-34, paras. 53-54 (2003) (*Schools and Libraries Third Report and Order*).

<sup>15</sup> *Id.* at 26934, para. 54.

when applicants fail to timely submit their invoice and have not properly requested an invoice extension, committed funds that have not been invoiced must be de-obligated and considered “unused funds” eligible for carry forward. The carry forward amount should also include any dollars represented by funding requests that have been denied for the current funding year. USAC has not always implemented this guidance consistently. For example, under this approach, USAC’s second quarter filing in the 2017 calendar year should have included all funds that had been de-obligated or would be considered unused for funding year 2016 as of the time of that filing. In implementing the carry forward procedure, the Commission intended for USAC to be able “to refine its calculation of available funds over four reporting quarters as the funding year progresses starting with the third quarter of the calendar year.”<sup>16</sup> This intention remains – the Commission and our nation’s schools and libraries should be able to determine from USAC’s quarterly filings the amounts for each fund year that are expected to be included in the carry forward amount. Understanding that it should be reserving 100 percent for the funding categories mentioned above, while at the same time adjusting the reserve amounts on a quarterly basis, should enable USAC to follow the carry forward procedures in a systematic way and provide certainty about the amount of funds targeted for carry forward into the next funding year.

Thank you for USAC’s attention to this E-rate fund management issue as well as your continued efforts on other USF issues. We expect that you will be able to carry out the reserve instructions herein beginning with the filing expected for 3Q 2017, and will seek our help with matters that require additional Commission guidance and interpretation. If you have questions or would like further assistance, please do not hesitate to contact me.

Sincerely,

Mark Stephens  
Managing Director

cc: Kris Anne Monteith, WCB  
Madeleine V. Findley, WCB  
Chin Yoo, OGC  
Cara Voth, OMD

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<sup>16</sup> *Id.* at 26934-35, para. 56.